From: Bob
To: Microsoft ATR
Date: 1/23/02 3:14pm
Subject: Microsoft Settlement

To whom it may concern:

The Proposed Final Judgement (PFJ) in United States v. Microsoft Corp., Civil Action No. 98-1232 fails to properly address Microsoft's behavior. There are so many problems with it, I feel it is a disservice both to the public and Microsoft. Philosphically (but not paradoxically), Microsoft would be better served by having their behavior modified more dramatically. They will produce better product and be a better company for it. The public gains by having better product at lower prices.
The PFJ is most emphatically NOT in the public interest. Nonetheless, here are some of the problems:
There is no monetary penalty. Microsoft has broken the law. You cannot put a legal fiction in jail, nor would it be appropriate to apply the death penalty to it (dissolve the corporation). The only penalty left is the language Microsoft understands - money.
There is no discussion of enforcement. The technical committee has reporting powers only. Given Microsoft's penchant for stalling and delay tactics, this is unacceptable.
The PFJ doesn't take into account Windows-compatible competing operating systems.
The PFJ's overly narrow definitions of "Microsoft Middleware Product" and "API" means that Section III.D.'s requirement to release information about Windows interfaces would not cover many important interfaces.
No part of the PFJ obligates Microsoft to release any information about file formats, even though undocumented Microsoft file formats form part of the Applications Barrier to Entry (see "Findings of Fact" paragraph 20 and paragraph 39).
Microsoft is not required to disclose which of its patents cover the Windows operating system. This should be changed to allow potential competitors to determine whether they are violating Microsoft patents.
Microsoft's End User License Agreements (EULAs) often times contain provisions that prohibit companies from using Microsoft's tools to develop software that competes with Microsoft. This should be addressed.
Microsoft's EULAs discriminate agains software that is free. Free as in cost, and free as in liberty. For an example, see the Microsoft Windows Media Encoder 7.1 SDK EULA.
Microsoft's EULAs prohibit the use of software written (using Microsoft tools) by third parties on anything but a Microsoft product. This is wrong. Similarly, Microsoft products that might run well on a Windows emulator are not permitted to do so, according to Microsoft's EULAs.
ISVs writing competing operating systems as outlined in Findings of Fact (52) sometimes have difficulty understanding various undocumented Windows APIs. The information released under section III.D. of the PFJ would aid those ISVs -- except that the PFJ disallows this use of the information.

Worse yet, to avoid running afoul of the PFJ, ISVs might need to divide up their engineers into two groups: those who refer to MSDN and work on Windows-only applications; and those who cannot refer to MSDN because they work on applications which also run on non-Microsoft operating systems. This would constitute retaliation against ISVs who support competing operating systems.

Section III.A.2. allows Microsoft to retaliate against any OEM that ships Personal Computers containing a competing Operating System but no Microsoft operating system.

Why does section III.B only cover the "top 20" OEMs? This leaves Microsoft free to retaliate against smaller OEMs, including important regional 'white box' OEMs, if they offer competing products. Small businesses drive the American economy, yet Microsoft is free to penalize them to their heart's desire.

Section III.H.3. of the PFJ requires vendors of competing middleware to meet "reasonable technical requirements" seven months before new releases of Windows, yet it does not require Microsoft to disclose those requirements in advance. This allows Microsoft to bypass all competing middleware simply by changing the requirements shortly before the deadline, and not informing ISVs.

Section III.J.1.a offers Microsoft a blanket exception to disclosing anything, under the guise of security. Security through obscurity is rarely effective. In this case it allows them to argue for continued behavior of the kind that has already been declared illegal.

Unless I've parsed all the competing word negation in section III.J.2 wrong, section III.J.2 allows Microsoft to condition release of information on spurious terms. E.g. (b) "reasonable business need". This allows Microsoft to cut out someone doing pro bono work. (c) allows Microsoft to set the standards, except they've already proven their criteria for licensing is illegal. All of section 2 needs rewritten or better, thrown out.

Section IV.B.9 is unreasonable. This action is a public procedure, Microsoft was convicted through the use of public money, and the long term results should be available to the public. There is no justification to keep the results secret. The United States Government of the people, by the people, for the people brought this action.

Definition J is wrong. All code should be covered, not just "major version[s]". Major versions are a fiction made up by marketing departments.

Definition K covers product that existed when the action started, but fails to address new software released before the final judgement is entered. Again, all Microsoft products should be covered. Nothing is stopping Microsoft from taking a product that already exists, gutting it and rewriting it with code that again demonstrates illegal behavior, but is not covered by the PFJ. As another example, the PFJ covers Outlook Express, but not Outlook. Why is Microsoft Office excluded?

Definition U unnecessarily restricts "Windows Operating System Product" to a few pieces of software. Cover all Microsoft code, not just software that runs on machines the size of a large block of wood. My personal

"organizer" is a personal computer. It is much more powerful than desktop machines from ten years before it. It has an operating system, RAM, ROM, static storage, communications, a keyboard, a screen; in short, every element that defines a personal computer. Microsoft is powerful. Using that power to jump from Intel-compatible systems to something else would be one way out of the PFJ.

Please throw out this judgment and direct the plaintiffs to come up with something stronger. Microsoft (the defendant) should have little say in the matter. They are guilty, adjudged so in a proper court of law.

Bob Schulze